HONOURABLE MRS. JUSTICE T.MEENA KUMARI

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HONOURABLE MS JUSTICE G. ROHINI

W.P.M.P.No:33415 of 2007

&

WRIT PETITION No:21860 OF 2007

Dated: 26th December, 2007

Between:

M/s. ACS Technologies,
rep., by its Proprietor
Jaygopal, Kutkatpally,
Hyderabad.

..Petitioner

And

1. Government of A.P.,
   Commercial Taxes Department,
   Hyderabad and others.

..Respondents.

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W.P.M.P.No:33415 of 2007

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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking a direction to respondents 2 and 3 to set aside the final assessment order dated 23.2.2007 for the year 2003-2004 by declaring the action of the respondents as not maintainable and unenforceable.

It is the case of the petitioner that he is doing business in execution of works contract, which falls under declared goods and permission was granted to him vide Form L-1 to pay the tax at the rates specified under Section 5G of the General Sales Tax Act. Under Section 5F of General Sales Tax Act, every dealer involved in the execution of works contract has to pay the tax at the rate of 4% on every rupee of his turnover pertaining to declared goods. But the 3rd respondent without considering Form L-1 and without giving any opportunity issued final assessment order dated 23.2.2007 directing him to pay the sales tax at the rate of 8% on the net turn over. In spite of his representations, the tax has not been reassessed. Having aggrieved by the same, the present writ petition is filed.

Heard the learned Counsel for the petitioner as well as the learned Government Pleader for Commercial Tax. Perused the material available on record.

It is the contention of the learned Counsel for the petitioner that the respondents admitted in their counter that they did not enter the L1 certificate issued to the petitioner in the register maintained by the Department and for that omission by the department, the petitioner cannot be penalized and apart from that, no prior notice was given to him before passing the assessment order and therefore, the assessment order impugned is liable to be set aside.

On the other hand, the learned Government Pleader contended that even though a show cause notice has been issued on 6.7.2006 proposing to assess the tax for the year 2003-2004 and the petitioner was asked to file his objections, but there was no response from the petitioner and hence, the final assessment has been issued. Therefore, the assessment impugned does not warrant any interference by this Court.

In view of the peculiar facts and circumstances of the case and in view of the fact that principles of natural justice requires that an opportunity should be afforded to the party before issuing assessment order in a case of this nature, without expressing any opinion on the merits of the case, We are of the opinion that the assessment order impugned shall be treated as a notice, for which, the petitioner shall file his objections with appropriate material within a period of four weeks from the date of receipt of a

copy of the order and on such objections, the respondents shall dispose of the same within a period of four weeks thereafter in accordance with law. Till then, there shall be stay of further proceedings pursuant to the assessment order impugned.

At this stage of the proceedings, it is pertinent to note that the petitioner has moved the above application seeking a direction to the respondents to issue the way bills and C forms to the petitioner so as to continue his business in its normal course, for which, the learned G.P. has fairly conceded basing on the written instructions that the respondents are inclined to issue the ways bills as well as the C forms. Accordingly, the direction as sought for in W.P.M.P.33415 of 2007 is granted.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date:26th DECEMBER, 2007
Note:
CC in two days.
(BO)Nn.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

W.P.M.P.No:33415 of 2007

&

WRIT PETITION No:21860 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

26/12/2007